

## **REMARKS**

The above amendments are made in response to the outstanding Non-final Office Action dated May 27, 2008. The Examiner's reconsideration is respectfully requested in view of the above amendments and the following remarks

Claims 1, 2, 4-6, 8-10, 13 and 15-17 have been amended to more clearly define the claimed invention. Claims 7 and 14 have been cancelled. No new matter has been introduced by these amendments.

Claims 1-6, 8-13 and 15-17 are thus pending in the present application.

### **Claim Rejections Under 35 U.S.C. §101**

Claims 1-17 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

In this regard, Applicants have amended the claims of this application on the whole to overcome this rejection. Specifically, Claims 1-9 and 16 have been amended to clearly specify the respective system components and thus be directed to an auction system. Claims 10-15 and 17 have been amended to be drawn to a business method implemented in a computer system and also stored in a computer readable medium.

Applicants therefore respectfully request the Examiner to reconsider the amended claims and withdraw the rejection on claims under 35 U.S.C. § 101.

### **Claim Rejections Under 35 U.S.C. §103**

Claims 1-4, 6, 9-11, 13 and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Salls (U.S. Patent Application Publication No. 2003/0050853; hereinafter, "Salls") and in view of Harrington (U.S. Patent No. 6,161,099; hereinafter, "Harrington"), and further in view of Grey (U.S. Patent Application Publication No. 2002/0174054; hereinafter, "Grey") and Otero (U.S. Patent Application Publication No. 2005/0027623; hereinafter, "Otero").

Claims 5, 8 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Salls, Harrington, Grey and Otero, and further in view of Walker (U.S. Patent No. 6,077,163; hereinafter, "Walker-1").

Claims 7, 8 and 14-17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Salls, Harrington, Grey and Otero, and further in view of Walker (U.S. Patent Application Publication No. 2003/0032476; hereinafter, "Walker-2").

In order for an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art; that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references; and that the proposed modification of the prior art must have had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996). See MPEP 2143.

Establishing a prima facie case of obviousness requires that all elements of the invention be disclosed in the prior art. *In re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970). Further, even assuming that all elements of an invention are disclosed in the prior art, an Examiner cannot establish obviousness by locating references that describe various aspects of a patent applicant's invention without also providing evidence of the motivating force which would have impelled one skilled in the art to do what the patent applicant has done. *Ex parte Levengood*, 28 U.S.P.Q. 1300 (Bd. Pat. App. Int. 1993). The references, when viewed by themselves and not in retrospect, must suggest the invention. *In re Skill*, 187 U.S.P.Q. 481 (C.C.P.A. 1975).

Claims 1, 2, 4-6, 13, 8-10 and 15-17 have been amended to more clearly define the claimed invention. Claims 7 and 14 have been cancelled, of which subject matters are incorporated into Claims 1 and 10 respectively. Claims 1 and 10 are independent claims. Claims 2-6, 8, 9 and 16 are dependent directly or indirectly from Claim 1. Claims 11-13, 15 and 17 are dependent directly or indirectly from Claim 10.

The amended Claim 1 includes, *inter alia*, the following limitation:

“an entrance fee refund processor module, if the entrance fee type of the item is a variable type where an initial entrance fee varies with an accumulated entrance fee of the item and a total number of bidders for the item which are obtained, comparing the accumulated entrance fee of the item with a maximum payable bid price of the item after the bid for the item is terminated, and refunding each of bidders having bidden for the item an amount of money obtained by dividing a surplus of the accumulated entrance fee by a total number of the bidders when the accumulated entrance fee exceeds the maximum payable bid price, but otherwise not refunding”

The amended Claim 10 includes, *inter alia*, the following limitation:

“recognizing that the entrance fee type of the item is a variable type where an initial entrance fee varies with an accumulated entrance fee of the item and a total number of bidders for the item which are obtained when the bid for the item is terminated, comparing the accumulated entrance fee with the maximum payable bid price, determining whether to refund according to the result of the comparison, and refunding some of the initial entrance fee of the item to each of the buyers having bidden for the item”

As above, the claimed invention is drawn to an auction system and method *based on an entrance fee profit model*. That is, every buyer (bidder) pays an entrance fee, which is *accumulated for the total number of bidders during the bidding process*. Further, after the bid is terminated, *the accumulated entrance fee is compared with the maximum payable bid price*, and *some of the initial entrance fee is refunded to each of the buyers (bidders)* under certain predetermined conditions.

In the outstanding Office Action, the Examiner has asserted, regarding Claims 7 and 14 (which are now incorporated into Claim 1 and 10 respectively), that Salls and Walker-2, in combination, disclose the above limitations as recited in Claims 1 and 10 respectively. Applicants respectfully disagree with the Examiner's assertion.

Salls is directed to an on-line raffle section. However, it is submitted that Salls neither teaches nor suggests *accumulating entrance fees, comparing the accumulated entrance fee with a maximum payable bid price and refunding some of the entrance fee to each buyer (bidder) under certain conditions*, as recited in Claims 1 and 10.

Walker-2 is directed to methods and apparatus for providing a benefit to a player of a gaming Website. Walker-2 discloses, in paragraph [140] thereof, a refund of the entry fee or

waiver of an entry fee to play on the gaming Website. In contrast, Applicants' claimed invention is drawn to an auction system and method, where the entrance fees paid by every bidder are accumulated during the bidding process and the accumulated entrance fee is used to determine as to whether or not to terminate the bid process. Further, the accumulated entrance fee is compared with the maximum payable bid price, and some of the initial entrance fee is refunded to each of the buyers (bidders) under certain predetermined conditions. Thus, it is respectfully submitted that Walker-2 fails to teach or suggest Applicants' claimed features about the entrance fee refund and their relevant operations, as recited in Claims 1 and 10.

Harrington is directed to a method of conducting auctions. Otero is directed to a method and system for no-cash electronic game in conjunction with fund raising process. Grey is directed to a method, apparatus and computer implemented instructions for auctioning in a data processing system. Walker-1 is directed to the structure and operation of a gaming device. However, it is submitted that none of these references teaches or suggests *accumulating entrance fees, comparing the accumulated entrance fee with a maximum payable bid price and refunding some of the entrance fee to each buyer (bidder) under certain conditions*, as recited in Claims 1 and 10.

It is therefore submitted that the cited references, either alone or in combination, fail to teach or suggest the subject matter claimed in amended Claims 1 and 10, and thus *no suggestion or motivation* exists in the cited references. Accordingly, *prime facie* obviousness does not exist regarding the subject matter claimed in Claims 1 and 10 with respect to the cited references. Applicants respectfully submit that Claims 1 and 10 are now allowable. Claims 2-6, 8, 9 and 16, and Claims 11-13, 15 and 17 are also believed to be allowable, by virtue of their direct or indirect dependency from Claim 1 and 10 respectively.

Applicants respectfully request the Examiner to consider these submissions and withdraw the rejection on claims under 35 U.S.C. §103(a).

**Conclusion**

In view of the foregoing, it is respectfully submitted that the instant application is in condition for allowance. Reconsideration and subsequent allowance of this application are courteously requested.

If there are any charges due with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicant's attorneys.

The Examiner is invited to contact Applicant's Attorneys at the below-listed telephone number with any questions or comments regarding this Response or otherwise concerning the present application.

Respectfully submitted,

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